

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID DATE, JR. and ELLIOT
HANDLER, Individually and On Behalf of All
Others Similarly Situated,

Plaintiffs,

Case No. 07-CV-15474

vs.

Honorable Paul D. Borman
Magistrate Judge R. Steven Whalen

SONY ELECTRONICS, INC. and ABC
APPLIANCE, INC. d/b/a ABC
WAREHOUSE,

Defendants.

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**PLAINTIFFS' EX PARTE MOTION
TO EXTEND FACT DISCOVERY CUT-OFF DATE**

Plaintiffs, by and through their attorneys, hereby move *ex parte* to extend the fact discovery cut-off date, stating as follows:

1. Fact-discovery is currently set to close on January 20, 2011. However, given the nature of Defendants' discovery responses thus far, Plaintiffs respectfully request a 90-day extension of time to conduct discovery.

2. For instance, as part of its rolling production, by August 27, 2010, Sony had produced more than six hundred thousand (600,000) pages of documents. Then, on September 7, 2010, Sony produced another forty-one thousand (41,000) pages of documents. And as recently as October 25, 2010, Sony produced almost nine thousand five hundred (9,500) additional pages.

3. Among other impediments, the nature of such production has made it impossible for Plaintiffs to adequately prepare for deposition of Sony's witnesses. Insofar as Fed. R. Civ. P. 30(b)(6) deponents are usually produced only once, Plaintiffs have previously been reluctant to conduct such depositions until such time that they are certain that all documents that might be useful as exhibits in those depositions have been produced and reviewed. However, given the current pending deadline, Plaintiffs had no choice but to notice up the deposition of Sony's Rule 30(b)(6) witness(es) for December 20, 2010. Sony has already indicated that it will be unable to attend and that the deposition(s) will need to be rescheduled.

4. Additionally, after requesting and receiving an extension of time to respond to Plaintiffs' discovery to ABC Warehouse, ABC Warehouse recently provided Plaintiffs with responses in which it: 1) failed to provide any substantive response to the interrogatories;¹ 2) was unable to "truthfully admit or deny" all of Plaintiffs' requests for admission; and 3) has not yet produced any documents. Moreover, ABC has indicated that the parties will need to enter into a

¹ The only interrogatory response with a semblance of fact was one in which ABC indicated that it has not yet determined which witnesses it will call at trial.

protective order to receive responses to certain discovery requests, which will also take additional time to negotiate, draft, and receive court approval for.

5. Pursuant to Local Rule 7.1(a), there was a conference between attorneys or unrepresented parties and other persons entitled to be heard on the motion in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought.

Based on the foregoing, Plaintiffs respectfully request that the Court extend the fact discovery cut-off date by 90 days, up and until April 20, 2011. A proposed order is submitted with this motion.

Respectfully Submitted,

By: /s/ Lance A. Raphael

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